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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

United States of America,  
  
Plaintiff,  
  
v.  
  
James W. Clark,  
  
Defendant.

No. CR-22-00889-01-PHX-MTL

**GOVERNMENT'S SENTENCING  
MEMORANDUM**

**UNITED STATES' SENTENCING MEMORANDUM**

On February 14, 2021, Defendant James W. Clark sent a web communication to the Arizona Secretary of State's Office that contained a bomb threat. Defendant was subsequently charged with one count each of 18 U.S.C. §§ 844(e) (bomb threat), 1038 (bomb hoax), and 875(c) (interstate threatening communication). Defendant pled guilty to

1 one count of transmitting an interstate threatening communication. Threats such as that  
2 sent by Defendant represent a growing problem of national concern: As is true in this case,  
3 threats leave election officials and workers fearful for their lives and for the safety of their  
4 families.

5  
6 For the reasons discussed below, a within-Guidelines sentence of 57 months of  
7 imprisonment for Defendant is sufficient but not greater than necessary to comply with the  
8 purposes outlined in 18 U.S.C. § 3553.

9  
10 **I. BACKGROUND**

11 The Draft Presentence Investigation Report (“PSR”), ECF No. 53; the plea  
12 agreement (“Plea Agreement”), ECF No. 47; and the Government’s Response in  
13 Opposition to Defendant’s Objections to the Draft Presentence Report (“Gov’t Resp.”),  
14 ECF No. 63, provide detailed information regarding the facts underlying the charged  
15 conduct, so the government only briefly describes the facts here.

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17 On or about February 14, 2021, at approximately 9:52 p.m., local Arizona time,  
18 while in Yarmouth, Massachusetts, Defendant submitted an electronic communication to  
19 an official (“Public Official”) with the Arizona Secretary of State’s Office in Phoenix,  
20 Arizona, via the “Contact Elections” online form of the Arizona Secretary of State’s Office  
21 website. (Plea Agreement, at 7.) In the subject line of this message, Defendant wrote the  
22 first name of Public Official. (*Id.*) In the body of the communication, Defendant wrote,  
23 “Your attorney general needs to resign by Tuesday February 16th by 9 am or the explosive  
24 device impacted in her personal space will be detonated. Thanks!!!! Don.” (*Id.*; PSR ¶¶ 2,  
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6.) In the “Name” section of the communication, Defendant wrote, “Donny Dee.” (Plea Agreement, at 7.)

Further, Defendant conducted the following searches, at the approximate days and times listed below, with the transmittal of the charged communication bolded in the below sequence:

- February 14, 2021, at 9:47 p.m., local Arizona time: Defendant searched for “Arizona secretary of state” and visited the Arizona Secretary of State website at <https://azsos.gov>.
- **February 14, 2021, at 9:48 p.m. and 9:51 p.m., local Arizona time: Defendant visited the Contact Elections page of the Arizona Secretary of State’s web site at <https://azsos.gov/contact-elections>.**
- February 14, 2021, at 9:52 p.m., local Arizona time: Defendant searched for “[Public Official’s Full Name] crazy.”
- February 14, 2021, at 9:52 p.m., local Arizona time: Defendant visited a website at [https://www.kvoa.com/news/top-stories/2020/11/19/secretary-of-state-\[Public Official’s Full Name\]-responds-to-threats-over-election-results/](https://www.kvoa.com/news/top-stories/2020/11/19/secretary-of-state-[Public Official’s Full Name]-responds-to-threats-over-election-results/).<sup>1</sup>
- February 14, 2021, at 9:52 p.m., local Arizona time: Defendant searched for “[Public Official’s Full Name] address.”
- February 14, 2021, at 9:53 p.m., local Arizona time: Defendant searched for “[Public Official’s Full Name] how to kill.”
- February 18, 2021, at 2:39 a.m., local Arizona time: Defendant searched for “fema boston marathon bombing.”
- February 18, 2021, at 2:42 a.m., local Arizona time: Defendant searched for “fema boston marathon bombing plan digital army”

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<sup>1</sup> The website for this November 19, 2020 article appears to have changed to: [https://www.kvoa.com/news/politics/secretary-of-state-\[Public Official’s full name\]-responds-to-threats-over-election-results/article\\_5767a07e-046d-5d71-aca6-c62b3d0c84ac.html](https://www.kvoa.com/news/politics/secretary-of-state-[Public Official’s full name]-responds-to-threats-over-election-results/article_5767a07e-046d-5d71-aca6-c62b3d0c84ac.html).

1 (PSR ¶¶ 6, 7; Plea Agreement, at 7-8; Gov't Resp. at 2-3.)

2 Defendant transmitted the charged bomb threat on Sunday, February 14, 2021.  
3 Monday, February 15, 2021, was a federal holiday.<sup>2</sup> Then, on February 16, 2021, shortly  
4 after the 9 a.m. deadline for detonation of the threatened explosive device, staff members  
5 at the Arizona Secretary of State's Office read Defendant's message, were fearful, and  
6 immediately contacted law enforcement, which quickly responded to the situation. (PSR  
7 ¶ 7.)  
8

9  
10 In response, law enforcement partially evacuated the Arizona Secretary of State's  
11 Office and the floor of the Arizona Governor, which is located in the same building as the  
12 Arizona Secretary of State. (PSR ¶ 7.) Law enforcement ordered the governor and other  
13 employees in the building to shelter in place. (PSR ¶ 12.) Meanwhile, the Department of  
14 Public Safety ("DPS") searched for an explosive device with its canines on the floors of  
15 the Arizona Governor and the Arizona Secretary of State's Office. (*Id.*) Additionally, DPS  
16 conducted bomb sweeps of both the Public Official's personal residence and her vehicle.  
17 (*Id.*) The law enforcement responses to Defendant's bomb threat impacted official  
18 business at the government building. (*Id.*) Further, after investigation into the source of  
19 the threat and tracking the IP address for the threat, DPS coordinated with the  
20 Massachusetts State Police to approach and interview Defendant on February 25, 2021.  
21  
22 (PSR ¶¶ 7, 8.)  
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28 <sup>2</sup> U.S. Office of Personnel Mgmt, Federal Holidays: Historical Data (2023-2011),  
<https://www.opm.gov/policy-data-oversight/pay-leave/federal-holidays/#url=Historical-Data>.

On July 26, 2022, Defendant was charged by indictment with one count of making a bomb threat, one count of perpetrating a bomb hoax, and one count of communicating an interstate threat. (Indictment, ECF No. 3.) On August 11, 2023, Defendant pled guilty to one count of transmitting an interstate threat. (Plea Agreement, at 2.) Defendant acknowledged that the circumstances of his sending the message described above were such that it may reasonably be believed that Defendant placed or would detonate an explosive or other lethal device in a place of public use or a state or government facility. (Plea Agreement, at 8.) Defendant also acknowledged that he sent the message charged in this case for the purpose of issuing a true threat and acknowledged that a reasonable recipient would have interpreted the message that he transmitted as a true threat. (*Id.*)

## II. SENTENCING RECOMMENDATION

### A. The Court Should Sentence Defendant to 57 Months of Imprisonment

Defendant's conduct warrants a term of imprisonment within the Guidelines range—here, 57 months, which would be sufficient but not greater than necessary to comply with the purposes set forth in 18 U.S.C. § 3553. The government makes this recommendation on the basis that a Guidelines sentence would be appropriate. The Draft Presentence Report, ECF No. 53, correctly calculates the Guidelines range as 57 to 60 months. The government recommends a term of imprisonment of 57 months, at the low end of this Guidelines range,<sup>3</sup> though the government understands that Defendant plans to

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<sup>3</sup> The government further recognizes that Defendant has objected to several sentencing enhancements, ECF No. 58, in the Draft Presentence Report, and the government has responded to those objections, ECF No. 63. The Court's determination on the application of the disputed enhancements may affect the Defendant's Guidelines range. To the extent that the Defendant's sentencing range ultimately differs from the current range proposed in the Draft Presentence Report, the government notes that it intends to

1 present mitigation information that the Court may find warrants a below-Guidelines  
2 sentence.

3 Defendant pled guilty to one count of violating 18 U.S.C. § 875(c), which  
4 criminalizes “transmit[ing] in interstate or foreign commerce any communication  
5 containing any threat to kidnap any person or any threat to injure the person of another.”  
6 18 U.S.C. § 875(c); *see* Plea Agreement at 2. In the Plea Agreement, the parties made no  
7 agreements as to sentencing. (Plea Agreement at 3.)  
8

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10 B. The Nature and Circumstances of the Offense and the History and  
11 Characteristics of the Defendant (18 U.S.C. § 3553(a)(1))

12 The nature and circumstances of Defendant’s offense conduct justify the Guidelines  
13 term of imprisonment that the government seeks here. In response to Defendant’s bomb  
14 threat, law enforcement evacuated some workers on the floors of the Arizona Secretary of  
15 State’s Office and the Arizona Governor’s Office. Law enforcement ordered the governor  
16 and other employees in the building to shelter in place. Meanwhile, the Department of  
17 Public Safety (“DPS”) searched for an explosive device with its canines on the two floors.  
18 And the Public Official was subjected to bomb sweeps of both her home and her vehicle.  
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21 Employees at the Arizona Secretary of State’s Office who received the  
22 communication and responding law enforcement had no way of knowing that Defendant  
23 did not intend to detonate an explosive device. The law enforcement response—the  
24 immediate evacuations, orders to shelter in place, canine bomb sweeps, exigent  
25 circumstances investigative work to find the identity of Defendant—and the fear that  
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28 \_\_\_\_\_  
seek a sentence within the Guidelines range as determined by the Court.

1 Defendant's threat engendered among the staff in that building are entirely reasonable,  
2 foreseeable, and a direct result of Defendant's conduct. In fact, Defendant has stipulated  
3 as such, "acknowledg[ing] that a reasonable recipient would have interpreted the web  
4 contact message that he transmitted as a true threat." (Plea Agreement, at 8.)  
5

6 Yet in a recent prior filing, Defendant states that "evidence shows that [Defendant]  
7 was under the influence of drugs and alcohol, when he committed the crime," and that "[h]e  
8 was drunkenly trolling the internet, sitting inside a room in his family member's home,  
9 [and] binge drinking and using drugs every day . . . ." (ECF No. 58, at 6.) No such evidence  
10 is in the record, and Defendant cites to no support for this assertion.  
11

12 Additionally, Defendant filed a post-charge psychopharmacology evaluation  
13 under seal that suggests in part that other factors may have caused Defendant to lack the  
14 requisite subjective intent for the charged conduct.<sup>4</sup> Defendant argues that this report  
15 "outlines [Defendant]'s alcohol and drug use at the time of the offense and lays out Dr.  
16 [James D.] Stoeck's expert opinion regarding the cognitive, emotional, and behavioral  
17 effects of these psychoactive substances." (ECF No. 58, at 7.) Defendant also describes  
18 this report as "stat[ing] the quantity and types of substances [Defendant] was using,  
19 significantly impaired his cognition (decision making, higher reasoning), emotional  
20 stability and behavioral control (impulsivity)"; and that "the quantity of alcohol he was  
21 drinking (daily binge drinking) affected his sensory functions, concentration, attention,  
22 reaction time, decision making, judgment, informational processing, and memory  
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28 <sup>4</sup> The government cites to Defendant's descriptions of this report from Defendant's publicly docketed Objections to the Draft Presentence Report, ECF No. 58, for purposes of discussion here.

1 formation, up to the point of blackouts.” (*Id.*) Yet the writer based his analysis on medical  
2 records and did not state that he directly observed Defendant at the time he transmitted the  
3 charged threat.

4 The government acknowledges that Defendant has faced difficult, challenging  
5 circumstances, and it understands that Defendant plans to present mitigation information  
6 that the Court may find warrants a below-Guidelines sentence. At the same time, however,  
7 Defendant appears to be wavering in truly accepting responsibility for his conduct here.  
8 At bottom, Defendant is attempting to have it both ways—to distance himself from the  
9 charged conduct and the requisite subjective intent underlying the charge by arguing that  
10 he was “under the influence of drugs and alcohol,” ECF No. 58, at 6, when he committed  
11 the offense, while accepting the benefits of a plea for which Defendant has admitted that  
12 he had the “purpose of issuing a true threat” when he transmitted the charged bomb threat.  
13 (Plea Agreement, at 8.)

14 C. The Need for the Sentence Imposed to Reflect the Seriousness of the Offense,  
15 to Promote Respect for the Law, and to Provide Just Punishment for the  
16 Offense (18 U.S.C. § 3553(a)(2)(A))

17 The government’s sentencing recommendation accounts for the seriousness of the  
18 offense, which strikes at one of the tenets of our government: that public officials should  
19 be able to do their jobs free from fear and intimidation. Further, Defendant targeted the  
20 Public Official for her role in the administration of elections in Arizona. As described  
21 below, public officials and workers who administer elections have faced a growing number  
22 of threats to their lives and the safety of their families, and such threats have often disrupted  
23 or made more difficult the functioning of government and the administration of elections.



1 Given Defendant's conduct, a meaningful sentence is necessary to promote respect for the  
 2 law and provide just punishment commensurate with the fear and government disruption  
 3 that Defendant caused.

4  
 5 D. The Need for the Sentence Imposed to Afford Adequate Deterrence to  
 6 Criminal Conduct (18 U.S.C. § 3553(a)(2)(B))

7 A Guidelines term of 57 months' of imprisonment would adequately serve the  
 8 purpose of general deterrence. The government possesses no information that indicates  
 9 that the Defendant will commit similar offenses in this district. However, election officials  
 10 and workers report that they are targeted by threats across the nation, and this disturbing  
 11 trend underscores the need for general deterrence.

12  
 13 According to one survey, for instance, nearly one in three local election officials  
 14 report being threatened, abused, or harassed in recent years, and nearly half reported being  
 15 concerned about the safety of their colleagues and/or staff.<sup>5</sup> Further, 73 percent of local  
 16 election officials feel that threats have increased in recent years.<sup>6</sup> There are serious effects  
 17 to threats such as the ones charged here. For instance, over 50 percent of local election  
 18 workers are concerned that threats, harassment, and intimidation will harm the retention  
 19 and recruitment of workers to administer elections.<sup>7</sup>

20  
 21  
 22 These challenges to the retention and recruitment of election officials and workers  
 23 have very real consequences in Arizona. In this state, "80% of the state's counties have at  
 24

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 26 <sup>5</sup> See *Local Election Officials Survey*, Brennan Center for Justice at 3 (Apr. 2023),  
 27 available at <https://www.brennancenter.org/our-work/research-reports/local-election-officials-survey-april-2023>.

28 <sup>6</sup> *Id.* at 11.

<sup>7</sup> *Id.* at 3.

1 least one new chief local election official, and 98% of Arizonans will see the 2024 election  
 2 administered by someone different than the officials who administered the 2020 election.”<sup>8</sup>  
 3 Tellingly, “the officials who left these posts took with them a combined 176 years of  
 4 experience.”<sup>9</sup> And, “[i]n the counties with new chief local election officials, the median  
 5 amount of experience these officials had dropped from about 10 years to about 1 year.”<sup>10</sup>  
 6 High turnover among election officials and workers is expensive due to costs “to search  
 7 for, hire, and train new staff” on election administration processes and equipment specific  
 8 to each office.<sup>11</sup> Further, the loss of institutional knowledge can present serious challenges  
 9 to the administration and security of elections.<sup>12</sup>

12 Election officials and workers need to be able to administer and run free and fair  
 13 elections safely and securely. A sentence of 57 months of imprisonment could push those  
 14 who would criminally threaten election officials and workers to reconsider their planned  
 15 conduct, as the public becomes increasingly aware that such criminal conduct can have  
 16 serious consequences. Further, the victims here—and all individuals who administer our  
 17 elections—deserve to be able to do their jobs without fear and intimidation, and to know  
 18 that those who choose to threaten them will face just punishment.

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 24 <sup>8</sup> See Michael Beckel, *et al.*, Issue One, *The High Cost of High Turnover*, at 4  
 25 (Sept. 2023), <https://issueone.org/wp-content/uploads/2023/09/The-High-Cost-of-High-Turnover-Report.pdf>.

26 <sup>9</sup> *Id.*

27 <sup>10</sup> *Id.*

28 <sup>11</sup> *Id.* at 8.

<sup>12</sup> *Id.* at 9-10.

1     **III. Conclusion**

2             For the foregoing reasons, the United States respectfully requests that the Court  
3 sentence Defendant to a Guidelines term of imprisonment of 57 months, to be followed by  
4 a period of supervised release.  
5

6             Respectfully submitted this 4th day of March, 2024.

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8  
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12                    /s/ Sean K. Lokey  
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**CERTIFICATE OF SERVICE**

I hereby certify that on March 4, 2024, I electronically filed the foregoing pleading with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the attorney of record for the defendant.

/s/ Tanya Senanayake  
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